IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1298 OF 2004

Smt. Sitabai Motiram Tare
since deceased, through
Indrapal Motiram Tare & Ors. ..Appellants

versus

Shri Janya Tatya Patil ..Respondent.

Ms. Gauri Godse for the Appellant

Mr.Anil Kumar Patil for the Respondent

Coram : S.R.Sathe, J.
Dated : 16th March, 2006

P.C.

1. Heard both the learned Advocates.

2. The unsuccessful plaintiffs in the courts below have filed the present Second Appeal as their claim for permanent injunction against defendants was rejected.

3. It is plaintiff's case that the suit land bearing Survey No.57, Hissa No12/1A situated at Kolar is owned and possessed by them. However, the defendant, though not concerned with the said land tried to grab the suit land. Hence, plaintiffs filed suit simplicitor for injunction against the

defendant.

4. The defendant contended that plaintiff is not the owner of the suit land and the land was occupied by him as a tenant and application under Section 70B was preferred by him. He also contended that for last about 43 years he is in possession of the suit land. He, therefore prayed for the dismissal of the suit. Both the courts below have held that the evidence on record clearly shows that on the date of filing of the suit plaintiff was not in actual possession of the suit land, but on the contrary defendant was in actual possession of the suit land. According to the First Appellate Court it was in fact necessary for the plaintiff to file suit for declaration of his title. He, therefore, dismissed the plaintiffs appeal.

5. The learned Advocate for the appellant strenuously argued before me that merely because plaintiff had not filed suit for declaration, the First Appellate Court should not have dismissed the appeal having once come to the conclusion that the plaintiffs are owners of the suit property. She also submitted that the First Appellate Court ought to have taken into consideration the 7 x 12 extract

and mutation entries Nos.1743, 2158 and 2159 showing that on the date of filing of the suit i.e. 24.12.1990 plaintiffs were in actual possession. From the perusal of the judgment of the first appellate court it is very clear that the court has taken into consideration all the relevant documents including the mutation entry mentioned above. However, the court has given weightage to the order passed by the Tahsildar on 31.2.2001. From the perusal of the said order as well as from the other material on record it was very clear that on the date of filing of the suit the defendant was in actual possession of the suit land. Besides the documentary evidence the defendant had examined the adjoining owners and Talathi and Tahsildar. All of them had supported the contention of the defendant. There was no sufficient evidence on record to establish plaintiffs actual possession on the date of the suit. Findings recorded by both the courts below on the material before courts cannot be said to be perverse or against the evidence on record. Under the circumstances, there is no substantial question of law involved in this matter. Hence the appeal is dismissed in limine.

(S.R.Sathe, J.)